

19/Reply  
10/29/03  
Atty. Docket No. REV02 P-300

CERTIFICATE OF MAILING

I hereby certify that this paper, together with all enclosures identified herein, are being deposited with the United States Postal Service as first class mail, addressed to the Assistant Commissioner for Patents, Washington D.C. 20231, on the date indicated below.

October 13, 2003

Date

*Melanie S. Jernberg*  
Melanie S. Jernberg

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit : 2859  
Examiner : M. Jagan  
Applicant : Joseph D. Revnell  
Appln. No. : 09/505,119  
Filing Date : February 16, 2000  
For : MEASURING AND LAYOUT DEVICE

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

APPLICANT'S REPLY UNDER 37 C.F.R. § 1.193

This is in reply to Examiner's Answer dated as mailed August 12, 2003.

Items (1-5):

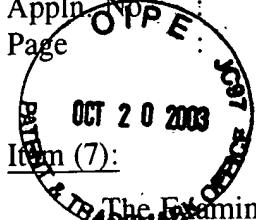
The Examiner has agreed that these items are acceptable as listed in the Appeal Brief.

Item (6):

The Examiner's Answer correctly states that Issue 1 is moot, that the rejection of claim 64 as set forth in Issue 2 is moot and that the rejection of claim 49 as set forth in Issue 3 is moot. The Examiner has agreed that the remainder of Issues 2 and 3 along with all of Issues 4-19 are acceptable as listed in the Appeal Brief.

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Item (7):

The Examiner has agreed that these items are acceptable as listed in the Appeal Brief. However, the Examiner has stated that the Examiner assumes that claim 45 stands or falls with claim 17 and that claim 60 stands or falls with claim 25 because claim 45 was indicated as both standing and falling with claim 17 and standing or falling alone and because claim 60 was indicated as both standing and falling with claim 25 and standing or falling alone.

Furthermore, the Examiner has stated that the Examiner assumes that claim 57 stands or falls with claim 25 because the Grouping of Claims section in the Appeal Brief is silent as to claim 57. While Applicant agrees with the Examiner's statement in the Examiner's Answer regarding claims 45 and 60, claim 57 continues to stand or fall alone. In the Appeal Brief, claim 57 was not listed in the Grouping of Claim section, but arguments were presented for its allowability in the argument section of the Appeal Brief. In this situation, the Examiner should have notified the Applicant of non-compliance as per 37 C.F.R. § 1.192(d). See M.P.E.P. §1206. However, the Examiner did not notify the Applicant of non-compliance. When the Applicant brought this to the Examiner's attention, the Examiner, after confirming with the Examiner's supervisor, told Applicant to point out that claim 57 stands or falls alone in the Reply Brief and that Examiner will address claim 57 once the Appeal is returned to the Examiner.

Item (8):

The Examiner agreed that a correct copy of the appealed claims appears in the Appendix of the Appeal Brief.

Item (9):

The Examiner agrees with Applicant.

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Items (10 and 11) Reply to Examiner's Grounds of Rejection and Arguments:

The Applicant's Appeal Brief stands, and is incorporated herein in its entirety. The following comments are intended to directly reply to the Examiner's Answer. In the Examiner's Answer, the Examiner made nineteen responses to the arguments made in Applicant's Appeal Brief. These nineteen arguments will be addressed in the order presented in the Examiner's Answer.

Issue 2: Whether claims 25, 54-56, 58, 59, 61, 62, 64 and 69 are anticipated by U.S. Patent No. 4,344,231 to Martinez?

*Claims 25, 54-56, 58, 59, 61 and 62*

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 25, 54-56, 58, 59, 61 and 62 are incorporated herein in their entirety.

*Claim 69*

Claim 69 defines a method of measuring and laying out an area including, among other things, forming an accurate template by recording a distance of a tape from a stationary member to each of a plurality of critical features and recording angle information for each distance recording signifying an angle of the tape relative to the stationary member during each distance recording. In the Examiner's Answer, the Examiner states that the Martinez '231 patent discloses that each marking, "x," on the graph paper as disclosed by the Martinez '231 patent "that indicates distance also indicates angular information since they indicate the angular position of the device relative to the stationary member as the device is rotated about the peg." However, claim 69 calls for recording both distance and angle information. The Martinez '231 patent does not disclose two recording acts, namely recording both distance and angle

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information. Furthermore, recording an "x" is not a recording of angle information.

Accordingly, claim 69 is in condition for allowance.

Issue 3: Whether claims 17, 40, 42-48, 53, 60 and 63 are unpatentable over U.S. Patent No. 4,344,231 to Martinez?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 17, 40, 42-48, 53, 60 and 63 are incorporated herein in their entirety. Furthermore, as discussed above regarding claim 69, while the Martinez '231 patent may disclose recording distance information, the Martinez '231 patent does not disclose recording both direction and distance information. Accordingly, claims 17, 40, 42-48, 53, 60 and 63 are in condition for allowance.

Issue 4: Whether claims 51 and 66 are unpatentable over U.S. Patent No. 4,344,231 to Martinez in view of French Patent 2,614,982 to Mercier?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 51 and 66 are incorporated herein in their entirety.

Issue 5: Whether claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65 are incorporated herein in their entirety. Furthermore, since the pivot pin 33 can easily be slipped out of position without applying any force to the pivot pin 33 or the surface, the measuring instrument as disclosed by the Barker '015 patent is not fixedly and rotatably attached to the surface. Therefore, any combination of the Barker '015 patent and the Moxey '670 patent do not disclose all of the

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features of claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65. Accordingly, claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65 are in condition for allowance.

Issue 6: Whether claims 5 and 57 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 4,835,870 to Rauch et al?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 5 and 57 are incorporated herein in their entirety. Furthermore, as discussed above regarding claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65, neither the Barker '015 patent nor the Moxey '670 patent disclose an angle and distance device fixedly and rotatably attached to a carrier. Accordingly, claims 5, 57 and 65 are in condition for allowance.

Issue 7: Whether claims 6, 13, 30, 32, 34, 36-38 and 64 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 5,768,797 to Trevino?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 6, 13, 30, 32, 34, 36-38 and 64 are incorporated herein in their entirety. Furthermore, as discussed above regarding claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63 and 65, neither the Barker '015 patent nor the Moxey '670 disclose an angle and distance device fixedly and rotatably attached to a carrier. Accordingly, claims 6, 13, 30, 32, 34, 36-38 and 64 are in condition for allowance.

Issue 8: Whether claims 8, 10, 59 and 61 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 4,344,231 to Martinez?

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The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 8, 10, 59 and 61 are incorporated herein in their entirety.

Issue 9: Whether claims 15 and 66 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and French Patent 2,614,982 to Mercier?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 15 and 66 are incorporated herein in their entirety.

Issue 10: Whether claims 16 and 67 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey and U.S. Patent No. 6,115,931 to Arcand?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 16 and 67 are incorporated herein in their entirety. Furthermore, Applicant notes that there is no suggestion or motivation for adding the attachment 40 and the pin attachment 100 as disclosed by the Arcand '931 patent to any combination of the Barker '015 patent and the Moxey '670 patent because the attachment 40 and the pin attachment 100 as disclosed by the Arcand '931 patent extend far below the tape blade 43 as disclosed by the Arcand '931 patent and, therefore, if the attachment 40 and the pin attachment 100 were added to any combination of the Barker '015 patent and the Moxey '670 patent, the arm 10 as disclosed by the Barker '015 patent would not be able to rest on the surface and the layout instrument of the combination would not be able to be used to accurately draw lines 39 or arcs 40. Moreover, the addition of the attachment 40 and the pin attachment 100 as disclosed by the Arcand '931 patent to any combination of the Barker '015 patent and the Moxey '670 patent would not allow a user of the combination to use the pins 25 and 33 because the pins 25 and 33 would not touch the surface.

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Additionally, according to the Examiner's Answer, “[t]he addition of the pointer will temporarily secure the end of the tape in an extended position distant from the stationary member, allowing a single person utilizing the device to make other markings on the stationary member.” First, the above motivation is not in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Second, “other markings” can be made whether the tape is extended or not and there is therefore no suggestion or motivation for making such a combination.

Finally, according to the Examiner's Answer, while the lock pins 27 and 30 as disclosed by the Barker '015 patent can be used to hold the rules 20 and 29 in position, they are not accessible at a position distant from the lock pins 27 and 30. First, there is no suggestion nor motivation that the rules 27 and 30 would be used at a position distant from the lock pins 27 and 30. As illustrated in Fig. 3 of the Barker '015 patent, the board is at most 1 foot by 1.5 feet. Therefore, all areas of the board are not distant from the lock pins 27 and 30. Second, the above motivation is not in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

Accordingly, there is no suggestion or motivation for combining the Barker '015 patent, the Moxey '670 patent and the Arcand '931 patent.

Issue 11: Whether claim 31 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 4,835,870 to Rauch et al?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claim 31 are incorporated herein in their entirety.

Issue 12: Whether claims 33 and 35 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No.

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5,768,797 to Trevino and U.S. Patent No. 4,344,231 to Martinez?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 33 and 35 are incorporated herein in their entirety.

Issue 13: Whether claim 39 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 2,349,670 to Moxey, U.S. Patent No. 5,768,797 to Trevino and U.S. Patent No. 6,115,931 to Arcand?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claim 39 are incorporated herein in their entirety. Furthermore, as discussed above regarding claims 16 and 67, there is no suggestion or motivation for combining the Barker '015 patent, the Moxey '670 patent and the Arcand '931 patent. Accordingly, claim 39 is in condition for allowance.

Issue 14: Whether claims 17, 40, 43, 45, 47, 48 and 50 are unpatentable over U.S. Patent No. 3,269,015 to Barker?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 17, 40, 43, 45, 47, 48 and 50 are incorporated herein in their entirety. Furthermore, according to the Examiner's Answer, “[a] marking that indicates the distance of one of the locations to the pivot point on the stationary member is recorded (written) at each of the locations as the angle and distance device is rotated about the pivot point.” However, only lines 39 and arcs 40 are drawn using the layout instrument as disclosed by the Barker '015 patent. Furthermore, according to the Examiner's Answer, “[e]ach of the markings that indicate distance also indicates angular information since they indicate the angular position of the device relative to the stationary member as the device is rotated about the pivot point.” However, neither the lines 39 nor the arcs 40 define recording direction and distance information. Furthermore, an arc cannot include angle information because it is drawn over

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several angles. Likewise, a line cannot include distance information because it is drawn over many distances. Therefore, drawing a line or an angle as disclosed in the Barker '015 patent and as set forth in the final rejection of claims 17, 40, 43, 45, 47, 48 and 50 cannot define extending a tape measure to a critical feature of an area in a room to be measured and recording direction and distance information on a stationary member from the tape measure relating to that critical feature. Accordingly, there is no suggestion or motivation for modifying the Barker '015 patent as set forth in the Examiner's Answer.

Issue 15: Whether claims 18 and 52 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 6,115,931 to Arcand?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 18 and 52 are incorporated herein in their entirety. Furthermore, as discussed above regarding claims 16 and 67, there is no suggestion or motivation for combining the Barker '015 patent and the Arcand '931 patent. Accordingly, claims 18 and 52 are in condition for allowance.

Issue 16: Whether claim 41 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 4,835,870 to Rauch et al?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claim 41 are incorporated herein in their entirety. Furthermore, according to the Examiner's Answer, "in adding a leg to the device of Barker, the leg will extend under the tape to support the tape and its edge will form an extension of the edge 22, which is used for making markings." However, the edge 22 as disclosed by the Barker '015 patent is not used for making markings and there is no suggestion or motivation for using the edge to make markings. The Examiner's Answer also states that "in making markings along the edge of the slot, a marking will also be made along the edge of the front leg since the edge of the front leg

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is coextensive with the edge of the slot." However, the edge 22 as disclosed by the Barker '015 patent is located below the rule 20. In the combination of the Barker '015 patent and the Rauch et al. '870 patent as set forth in the Examiner's Answer, a front leg extending beyond both sides of the rule 20 is added to the layout instrument as disclosed by the Barker '015 patent in order to add guide ribs 20 for the rule 20. Therefore, the edge would not be coextensive with the edge 22 of the slot 16. Accordingly, claim 41 is in condition for allowance.

Issue 17: Whether claims 44 and 46 are unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 4,344,231 to Martinez?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 44 and 46 are incorporated herein in their entirety. Furthermore, as discussed above regarding claims 8, 10, 59 and 61, there is no suggestion or motivation for combining the Barker '015 patent and the Martinez '231 patent. Accordingly, claims 44 and 46 are in condition for allowance.

Issue 18: Whether claim 49 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of U.S. Patent No. 5,768,797 to Trevino?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claim 49 are incorporated herein in their entirety.

Issue 19: Whether claim 51 is unpatentable over U.S. Patent No. 3,269,015 to Barker in view of French Patent 2,614,982 to Mercier?

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claim 51 are incorporated herein in their entirety.

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SUMMARY

Each appealed claim recites features that are not disclosed by any of the cited references and it would not have been obvious to modify the cited references to include the recited features of the appealed claims. The references upon which the Examiner relies in his rejections of the finally rejected claims do not disclose or suggest a carrier or an angle and distance device fixedly and rotatably connected to a stationary member or a method of measuring and layout including marking or recording both angle or direction and distance information. Applicant's invention resolves problems and inconveniences experienced in the prior art, and therefore represents a significant advancement in the art. Applicant earnestly requests that the Examiner's final rejection of 2-18, 25, 30-67 and 69, inclusive, be reversed, and that the subject application be passed to issuance forthwith.

Respectfully submitted,

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By: Price, Heneveld, Cooper,  
DeWitt & Litton

10/13/03  
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